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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,857	12/18/2000	James D. Hansa	40002-10083	4208

7590 08/27/2004  
Patent Docket Clerk  
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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/739,857

Applicant(s)

HANSA ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 7, 17, 18, 20-29, 32, 33, 35, 36, 38-41, 46, 47, 49-51, 53-55, 57, 58 and 60-66 is/are rejected.
- 7) ☒ Claim(s) 4, 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*H. Pratt*

HELEN PRATT  
PRIMARY EXAMINER

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims pending in the application are 1,4,6,7,17,18,20-30,32,33,35,36,38-41,46,47,49-51,53-55,57,58 and 60-66.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 17, 18, 20-29, 32, 33, 35-36, 38-41, 46-47, 49-51, 53, 54, 58, 60, 63-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tetra Werke (DE 3006158) (Tetra).

Tetra discloses as in claims 1 and 6 an uncooked food product which contains uncooked oat groats which has a vitamin mixture absorbed onto the oat groats which are then dried at amounts within the claimed amounts (page 2, 4<sup>th</sup> para.). The vitamins are seen to have been water dispersible as they are among the items claimed. Claims 1 and 6 differ from the reference in the use of whole oat groats. However, no patentable distinction is seen at this time in cut groats and whole oats. The specification infers that either type of oats can be used in the invention (page 18, line 11). Therefore, no criticality is seen in the use of whole oats instead of cut groats. As it is known that oats absorb water, cut or whole, it is obvious that if the oat is cut it will absorb fluids faster (page 1, para. 5 of Tetra Werke). Either way, the vitamins are absorbed into the oat groat. Nothing more than what is expected is seen in these limitations. Therefore, it would have been obvious to absorb vitamins into a whole

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groat, especially as the reference discloses that increased absorbency is obtained by cutting the oat groats.

The use of trace elements as in claim 7 which are considered to be minerals is disclosed on page 2, 5<sup>th</sup> paragraph. Therefore, it would have been obvious to absorb minerals into an oat groat.

Claim 17 further requires tempering the food and optionally equilibrating the food with the aqueous infusion mixture. However, the specification discloses on page 92<sup>nd</sup> para. that tempering is conventional. Therefore, it would have been obvious to temper the oats and to equilibrate or not in the process of Tetra.

Claim 18 further requires drying the oats to a desired moisture content. Tetra discloses drying the oats at 50 C back to their original water content (page 2, para. 4). Therefore, it would have been obvious to dry the oats in the process of Tetra to make the claimed product.

Claims 20-25, 28, 29 further require various processing limitations which have been discussed above or which are processing limitations well within the skill of the ordinary worker such as dissolving materials before applying the mixture and various drying steps using known apparatus. Therefore, it would have been obvious to use known processing steps in the claimed process.

Nothing new is seen in equilibrating in a storage bin as in claim 26, as some type of container is required to hold the oats. Therefore, it would have been obvious to dry in some type of container.

Claim 27 further requires drying the oats to a desired moisture concentration prior to the step of infusing the liquid. However, nothing new is seen in this step as the oats have some degree of dryness. Certainly, some degree of dryness is required to keep the oats from forming mold and mildew. Therefore, it would have been obvious to dry to a particular moisture content.

Claims 32 and 33 further require particular vitamins and minerals. However, these are well known ingredients, and nothing new is seen in the use of any of the particular vitamins or minerals absent a showing of unobvious results. Therefore, it would have been obvious to use known vitamins and minerals in the claimed composition.

The limitations of claims 36, 38-41, 46-47, 49, 50 and 60 have been disclosed above and are obvious for those reasons.

Claim 35 also requires non-water soluble ingredients. However, some vitamins such as ADEK are not water-soluble and would therefore be deposited on the outside of the cut oat. Therefore, it would have been obvious to use non-water soluble vitamins, which are also encompassed by the reference.

Certainly, as in claims 51 and 53 adding a vitamin or mineral mixture in water is a fat free procedure. Therefore, it would have been obvious to infuse with a fat free mixture in the claimed process.

Claims 54 and 58 further require contacting and tempering simultaneously or contacting prior to tempering. However, tempering is a conventional step, as disclosed in the specification on page 10, 3<sup>rd</sup> para. The specification discloses that the oat groats

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are tempered or conditioned – meaning that moisture equilibrates through the cut groats (supra). No difference is seen in tempering and contacting with an aqueous mixture, because obviously when tempering the oats have been contacted with moisture also and such will also occur when the oat is contacted with a liquid. Therefore, it would have been obvious to temper and contact simultaneously or to contact before tempering.

Claim 63 and 65 further requires tempering the oat groats and contacting before tempering. However, tempering is a conventional step, as disclosed in the specification on page 10, 3<sup>rd</sup> para. The specification discloses that the oat groats are tempered or conditioned – meaning that moisture equilibrates through the cut groats (supra). No difference is seen in tempering and contacting with an aqueous mixture, because obviously when tempering the oats have been contacted with moisture also and such will also occur when the oat is contacted with a liquid. Step c is optional. Therefore, it would have been obvious to temper and contact at the same time.

Claim 64 further requires tempering and contacting the oats with non-water soluble ingredients. As in claim 35, vitamins can also be non-water soluble. Therefore, it would have been obvious to contact with non-water soluble ingredients as shown by the reference.

The limitations of claim 66 have been discussed above, except that the contacting occurs prior to tempering. No difference is seen in tempering and contact, as Claims 63, 65 and 66 do not even require particular ingredient and the ingredient could

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be water. Therefore, it would have been obvious to contact prior to tempering because the ingredient could only be water.

Claims 55, 57, 61 -66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morello et al.

Morello et al. disclose an uncooked oat groat, which has been impregnated with non-native reactants, which can be simple sugars i. e., contacting as in claims 55 and 57 (col. 12, lines 54-55, col. 13, lines 5-12, col. 14, lines 1-10). Tempering as above is seen to be conventional. Sugars are known to be water-soluble. The oats are flaked at the end of the process as in claims 55 and 57 (drawing). Claims 61, 63, 65 differ from the reference in the particular amount of simple sugars, which have been impregnated into the groats. However, particular amounts are seen as being within the skill of the ordinary worker. Absent a showing that this amount is not within the claimed amount, it is seen that it would have been obvious to ingredients to the claimed composition as shown by Morello et al.

Claims 62, 64, 66 further require that the ingredient is non-water soluble. However, as the process is known to add ingredients in a water vehicle, it would have been obvious to add non-soluble ingredients if desired as the process of adsorption is well known, and it would have been obvious that non-soluble ingredients would have been adsorbed if they could not permeate the oats since they are not water soluble.



***Allowable Subject Matter***

***The allowance of claims 54 and 58 has been withdrawn as in the above rejections.***

Claims 4 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**ARGUMENTS**

Applicant's arguments filed 7-2-04 have been fully considered but they are not persuasive. Applicants argue that Tetra Werke only teaches oats, which are not whole, and that one would be led away from using whole groats. However, this is not seen because absorption and adsorption of grains is well known as in hydrating any cereal, which is called tempering. The dictionary definition for tempering is "to bring to a suitable state by mixing in or adding a usual liquid ingredient". (Webster's 9<sup>th</sup> New Collegiate Dictionary).

Applicants argue that even though only whole oats are claimed, that this does not lack invention and it is hindsight to note that the specification discloses both. However, this is not seen because the specification does not state any criticality in using only whole oats. The cutting in Tetra Werke is to speed the absorption, plus probably makes the cut oats more manageable for birds. The process of absorption is going to occur whether the oats are whole or cut, which is a scientific fact, not hindsight.

Applicants argue as to adsorption that this is not taught by Tetra Werke. However, as in the art rejection, Tetra Werke does not exclude fat-soluble vitamins

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(ADE and K). As they are not water -soluble they would have been adsorbed onto the oat.

Applicants argue that Tetra Werke discloses dissolving the vitamins. However, without more information, fat -soluble vitamins are seen to be disclosed which would have been adsorbed onto the oat grain.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 8-23-04